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Arizona Corporation Commission

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AZ CORP COMMISSION
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IN THE MATTER OF THE COMPLAINT OF
MOHAVE ELECTRIC COOPERATIVE, INC.
AGAINST UNISOURCE ENERGY
CORPORATION AND UNS ELECTRIC, INC.¹

DOCKET NO. E-01750A-04-0798
DOCKET NO. E-04204A-04-0798
DOCKET NO. E-04230A-04-0798 ←

IN THE MATTER OF THE APPLICATION OF
UNS ELECTRIC, INC. FOR AN ORDER
APPROVING A TRANSFER OF A PORTION OF
A CERTIFICATE OF CONVENIENCE AND
NECESSITY FROM MOHAVE ELECTRIC
COOPERATIVE, INC.

DOCKET NO. E-01750A-04-0824
DOCKET NO. E-04204A-04-0824

PROCEDURAL ORDER

BY THE COMMISSION:

On November 5, 2004, Mohave Electric Cooperative, Inc. ("Mohave") filed with the Arizona Corporation Commission ("Commission") a Complaint against UniSource Energy Corporation ("UniSource") alleging, among other things, that UniSource has improperly refused to provide wholesale service to Mohave under an Open Access Transmission Tariff, and that UniSource has refused to negotiate in good faith a system-wide border area agreement with Mohave. The Complaint was prompted by a request for service from Central Trucking, Inc. ("CTI") which plans to construct a building to conduct business in Mohave's certificated service area.

On November 15, 2004, UNS Electric, Inc. ("UNS") filed with the Commission an application seeking to have territory that was previously within the certificated service territory of UNS' predecessor, Citizens Utilities Company ("Citizens"), "revert" to UNS. Mohave currently holds the Certificate of Convenience and Necessity ("CC&N") for the territory that is in dispute, and

¹ On January 3, 2005, Mohave Electric Cooperative, Inc. ("Mohave") filed a Motion for Leave to File First Amended Complaint in order to add UNS Electric, Inc. as a respondent to the Complaint. Mohave's Motion was granted at the February 16, 2005 Procedural Conference and the revised caption reflects the addition of UNS Electric, Inc. as a named respondent. The above-captioned dockets were also formally consolidated at the February 16, 2005 Procedural Conference for purposes of hearing. The revised captions now reflect the correct description of these consolidated dockets that should be used for all subsequent filings in this matter.

1 in which CTI's property is located, pursuant to Decision No. 58798 (October 14, 1994)². UNS
2 concedes that the disputed territory is currently within Mohave's CC&N area, but contends that
3 Mohave was granted the portion of the service area in question solely for the purpose of serving a
4 specific customer, North Star Steel Company ("North Star"), which is no longer in business. UNS
5 argues that because the disputed area was previously served by Citizens, and North Star is no longer
6 in business, the CC&N area in which CTI is located should revert to UNS as Citizens' successor in
7 interest.

8 On January 31, 2005, the Commission issued an Emergency Order for Provision of Electric
9 Service ("Emergency Order") (Decision No. 67535). In the Emergency Order, the Commission
10 directed UNS to immediately provision electric service to CTI, on an interim basis, until the issues
11 raised in these dockets have been resolved. Decision No. 67535 made clear that the provision of
12 interim service by UNS would not prejudice any claims or arguments that either UNS or Mohave
13 may have in the pending cases.

14 **Motion to Dismiss**

15 On November 29, 2004, UNS filed an Answer to the Complaint and Motion for Dismissal.
16 UNS denied the material allegations in the Complaint and argued that the Complaint should be
17 dismissed because Mohave is attempting to have the Commission approve a new rate outside of a rate
18 case, and because borderline agreements should be established on a case-by-case basis to
19 accommodate specific customer situations.

20 Mohave filed a Response to UNS' Motion for Dismissal on January 3, 2005. Mohave
21 contends that a system-wide borderline agreement would provide uniform guidelines between the two
22 companies upon a showing that such an agreement is in the public interest. Mohave also argues that
23 its Complaint does not seek a rate increase but is instead asking for authority to recover any increased
24 costs associated with serving a single customer through a specific surcharge mechanism. Mohave
25 claims that the Commission has jurisdiction to hear and resolve the allegations raised in the
26 Complaint and requests that the Motion for Dismissal be denied.

27 ² In Decision No. 58798, the Commission transferred the portion of Citizens' CC&N to Mohave described in that Order
28 and stated that the transferred CC&N area "shall not revert to Citizens Utilities Company under any circumstances
without prior Commission approval" (*Id.* at 6).

1 The Motion for Dismissal filed by UNS is denied. Mohave's Complaint and UNS'
2 application raise issues of both fact and law that are best addressed through a full hearing on the
3 merits of each party's claims. As discussed at the February 16, 2005 Procedural Conference,
4 Mohave's allegations are inter-related with the relief sought by UNS in its application and, given the
5 administrative nature of the proceedings, it is entirely appropriate to allow the parties to present their
6 respective cases before a determination is made regarding each party's arguments. Under the facts
7 and circumstances presented herein, due process is best served by allowing a full airing of the issues
8 as opposed to precluding one party from presenting evidence in support of its claims.

9 **Procedural Schedule**

10 By Procedural Order issued February 3, 2005, a Procedural Conference was scheduled for
11 February 16, 2005 to discuss scheduling of discovery, testimony, and hearing dates.

12 The Procedural Conference was held on February 16, 2005 as scheduled. During the
13 conference, the parties agreed to the procedural schedule that is incorporated in the following
14 ordering paragraphs.

15 IT IS THEREFORE ORDERED that the hearing in the above-captioned matter shall
16 commence on **August 2, 2005, at 10:00 a.m.**, or as soon thereafter as is practical, at the
17 Commission's offices, 1200 West Washington Street, Arizona 85007.

18 IT IS FURTHER ORDERED that a pre-hearing conference shall be held on July 25, 2005, at
19 1:30 p.m., at the Commission's offices, for the purpose of scheduling witnesses and the conduct of
20 the hearing.

21 IT IS FURTHER ORDERED that the Staff Report and/or any direct testimony and associated
22 exhibits to be presented at hearing on behalf of Staff shall be reduced to writing and filed on or before
23 April 18, 2005.

24 IT IS FURTHER ORDERED that any direct testimony and associated exhibits to be presented
25 at hearing on behalf of Mohave, UNS, and any intervenors shall be reduced to writing and filed on or
26 before June 6, 2005.

27 IT IS FURTHER ORDERED that any rebuttal testimony and associated exhibits to be
28 presented at hearing by all parties shall be reduced to writing and filed on or before July 11, 2005.

1 IT IS FURTHER ORDERED that all filings shall be made by 4:00 p.m. on the date the filing
2 is due, unless otherwise indicated.

3 IT IS FURTHER ORDERED that any objections to any testimony or exhibits which have
4 been prefiled as of July 11, 2005, shall be made before or at the July 25, 2005 pre-hearing
5 conference.

6 IT IS FURTHER ORDERED that intervention shall be in accordance with A.A.C. R14-3-105,
7 except that all motions to intervene must be filed on or before May 16, 2005.

8 IT IS FURTHER ORDERED that discovery shall be as permitted by law and the rules and
9 regulations of the Commission, except that: any objection to discovery requests shall be made within
10 7 days³ of receipt and responses to discovery requests shall be made within 10 days of receipt; the
11 response time may be extended by mutual agreement of the parties involved if the request requires an
12 extensive compilation effort.

13 IT IS FURTHER ORDERED that, in the alternative to filing a written motion to compel
14 discovery, any party seeking discovery may telephonically contact the Commission's Hearing
15 Division to request a date for a procedural hearing to resolve the discovery dispute; that upon such a
16 request, a procedural hearing will be convened as soon as practicable; and that the party making such
17 a request shall contact all other parties to advise them of the hearing date and shall at the procedural
18 hearing provide a statement confirming that the other parties were contacted.⁴

19 IT IS FURTHER ORDERED that any motions filed in this matter that are not ruled upon by
20 the Commission within 10 days of the filing date of the motion shall be deemed denied.

21 IT IS FURTHER ORDERED that any responses to motions shall be filed within five days of
22 the filing date of the motion.

23 IT IS FURTHER ORDERED that any replies shall be filed within five days of the filing date
24 of the response.

25 IT IS FURTHER ORDERED that Mohave and UNS shall share the costs of providing public
26 notice of the hearing in this matter, by publishing the notice in a newspaper of general circulation in

27 ³ "Days" means calendar days.

28 ⁴ The parties are encouraged to attempt to settle discovery disputes through informal, good-faith negotiations before seeking Commission resolution of the controversy.

Mohave County, in the following form and style, with the heading in no less than 18 point bold type and the body in no less than 10 point regular type:

PUBLIC NOTICE OF CONSOLIDATED HEARING ON THE COMPLAINT OF MOHAVE ELECTRIC COOPERATIVE, INC. AGAINST UNISOURCE ENERGY CORPORATION AND UNS ELECTRIC, INC. (DOCKET NO. E-01750A-04-0798 et al.) AND APPLICATION OF UNS ELECTRIC, INC. FOR AN ORDER APPROVING A TRANSFER OF A PORTION OF A CERTIFICATE OF CONVENIENCE AND NECESSITY FROM MOHAVE ELECTRIC COOPERATIVE, INC. (DOCKET NO. E-01750A-04-0824 et al.)

On November 5, 2004, Mohave Electric Cooperative, Inc. ("Mohave") filed with the Arizona Corporation Commission ("Commission") a Complaint against UniSource Energy Corporation and UNS Electric, Inc. ("UNS") alleging, among other things, that UNS has improperly refused to provide wholesale service to Mohave under an Open Access Transmission Tariff, and that UNS has refused to negotiate in good faith a system-wide border area agreement with Mohave. The Complaint was prompted by a request for service from Central Trucking, Inc. ("CTI") which plans to construct a building to conduct business in Mohave's certificated service area.

On November 15, 2004, UNS filed with the Commission an application seeking to have territory that was previously within the certificated service territory of UNS' predecessor, Citizens Utilities Company ("Citizens"), "revert" to UNS. Mohave currently holds the Certificate of Convenience and Necessity ("CC&N") for the territory that is in dispute, and in which CTI's property is located, pursuant to Decision No. 58798 (October 14, 1994). UNS contends that Mohave was granted the portion of the service area in question solely for the purpose of serving a specific customer, North Star Steel Company, which is no longer in business. UNS claims that because the disputed area was previously served by Citizens, and North Star is no longer in business, the CC&N area in which CTI is located should revert to UNS as Citizens' successor in interest.

On January 31, 2005, the Commission issued an Emergency Order for Provision of Electric Service ("Emergency Order") (Decision No. 67535). In the Emergency Order, the Commission directed UNS to immediately provision electric service to CTI, on an interim basis, until the issues raised in these dockets have been resolved.

The Commission will hold a hearing on this matter beginning **August 2, 2005, at 10:00 a.m.**, at the Commission's offices, 1200 West Washington, Phoenix, Arizona. Public comments will be taken on the first day of the hearing. Written public comments may be submitted via e-mail (visit <http://www.cc.state.az.us/utility/cons/index.htm> for instructions), or by mailing a letter referencing Docket No. E-04230A-04-0798 et al. to: Arizona Corporation Commission, Consumer Services Section, 1200 West Washington, Phoenix, AZ 85007. If you have any questions about this application, you may also contact the Consumer Services Section of the Commission by calling 1-800-222-7000.

The law provides for an open public hearing at which, under appropriate circumstances, interested parties may intervene. Intervention shall be permitted to

1 any person entitled by law to intervene and having a direct and substantial interest
2 in the matter. Persons desiring to intervene must file a written motion to
3 intervene with the Commission, which motion must be sent to all parties of
4 record, and must contain the following:

- 5 1. The name, address, and telephone number of the proposed
6 intervenor and of any party upon whom service of documents is to be
7 made if different from the intervenor.
- 8 2. A short statement of the proposed intervenor's interest in the
9 proceeding (e.g., a customer, a shareholder, etc.).
- 10 3. A statement certifying that a copy of the motion to intervene
11 has been mailed to all parties of record in the case.

12 The granting of intervention, among other things, entitles a party to present sworn
13 evidence at the hearing and to cross-examine other witnesses. The granting of
14 motions to intervene shall be governed by A.A.C. R14-13-105, except that **all**
15 **motions to intervene must be filed on or before May 16, 2005.** For information
16 about requesting intervention, visit the Arizona Corporation Commission's
17 webpage at <http://www.cc.state.az.us/utility/cons/index.htm>. However, failure to
18 intervene will not preclude any interested person or entity from appearing at the
19 hearing and providing public comment on the application or from filing written
20 comments in the record of the case.

21 The Commission does not discriminate on the basis of disability in admission to
22 its public meetings. Persons with a disability may request a reasonable
23 accommodation such as a sign language interpreter, as well as request this
24 document in an alternative format, by contacting the ADA Coordinator, Linda
25 Hogan, at LHogan@admin.cc.state.az.us, voice phone number 602/542-3931.
26 Requests should be made as early as possible to allow time to arrange the
27 accommodation.

28 IT IS FURTHER ORDERED that the notice described above shall be published by no later
than April 18, 2005 and proof of publication shall be filed by no later than May 16, 2005.

IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
Communications) applies to this proceeding as the matter is now set for public hearing.

IT IS FURTHER ORDERED that all parties must comply with Rule 33 (c) and (d) of the
Rules of the Arizona Supreme Court with respect to practice of law and admission pro hac vice.

IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
Rules of the Arizona Supreme Court). Representation before the Commission includes the obligation
to appear at all hearings and procedural conferences, as well as all Open Meetings for which the
matter is scheduled for discussion, unless counsel has previously been granted permission to
withdraw by the Administrative Law Judge.

IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

Dated this 18th day of February, 2005



DWIGHT D. NODES
ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

The foregoing was mailed/delivered
this 18 day of February, 2005 to:

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By: 
Molly Johnson
Secretary to Dwight D. Nodes